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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/882,485	06/15/2001	Jay H. Connelly	042390P11866	8135

James Y. Go
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP
Seventh Floor
12400 Wilshire Boulevard
Los Angeles, CA 90025-1026

EXAMINER

VAN HANDEL, MICHAEL P

ART UNIT	PAPER NUMBER
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2623

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01/11/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/882,485

Applicant(s)

CONNELLY, JAY H.

Examiner

Michael Van Handel

Art Unit

2623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,81,82,87,88,90-93,95-97 and 99-102 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,81,82,87,88,90-93,95-97 and 99-102 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 10/22/2007.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/22/2007 has been entered.

Response to Amendment

1. This action is responsive to an Amendment filed 10/22/2007. Claims **1, 81, 82, 87, 88, 90-93, 95-97, 99-102** are pending. Claims **1, 91, 95, 99** are amended. Claims **2-80, 83-86, 89, 94, 98, 103** are canceled.

Response to Arguments

1. Applicant's arguments regarding claims **1, 91, 95, and 99**, filed 10/22/2007, have been fully considered, but they are not persuasive.

Regarding claims **1, 91, 95, and 99**, the applicant argues that Payton does not disclose filtering the prioritized content based on the user interests being performed at the client and refining the prioritized content into demanded content based on the demand table and broadcasting the demanded content to the client, as recited in claim 1. The examiner respectfully disagrees. As noted in the Office Action mailed 9/17/2007, Payton discloses a digital

information system for delivering virtual on-demand information over digital transport systems by offloading a portion of the system's peak bandwidth requirements to local subscribers. A local collaborative filtering system synthesizes the preferences of all of the subscribers and then predicts those items that each subscriber might like, and therefore request. Each subscriber is provided with a local storage device for storing, during off-peak hours, those items recommended by the collaborative filtering system (see Abstract). Payton further discloses prompting a subscriber to enter a rating, such as a number on a scale from 1 to 10, after using a requested item (col. 6, l. 36-39). The examiner interprets this as "filtering ... the prioritized content based on the user interests being performed at the client," as currently claimed. Payton discloses that these ratings are stored in a rating vector in the subscriber profile (col. 5, l. 7-10; col. 8, l. 50-56; & Fig. 6). The updated profile 40, including the rating vector, is transmitted from the subscriber back to the central distribution server 24 (col. 6, l. 51-53). The rating vector is used to determine the list of recommended items 44 for the subscriber (col. 5, l. 6-20). The list contains previously viewed items that the subscriber has rated very highly, and is thus likely to request again (col. 5, l. 15-21). A scheduling processor 46 merges the lists 44 of recommended items to prioritize the items 36 from the most to the least frequently recommended and places identifiers for these items in a refresh queue 47 For broadcast over the digital transport system 26 (col. 5, l. 22-26). The examiner interprets this as "refining the prioritized content into demanded content based on the demand table ... and broadcasting the demanded content to the client," as currently claimed.

Further regarding claims 1, 91, 95, and 99, the applicant argues that Payton does not teach or reasonably suggest that the demand table is received in response to a signal received at

the client from a server, or that the demand table is received automatically at a predetermined time. The examiner respectfully disagrees. As noted in the Office Action mailed 9/17/2007, Payton discloses that, in response to a periodic trigger, the local server 28 determines whether new subscriber profile data exists. If new data does exist, the local server dials up the distribution server 24 to establish a communication channel. The prediction filter then sends the new profile data back to the distribution server 24 (col. 7, l. 61-67; col. 8, l. 1-5; & Fig. 4). As noted above, the rating vector is part of the subscriber profile data. Since the trigger is periodic (occurs at regular intervals), the examiner interprets the profile as being "received automatically at a predetermined time," as currently claimed.

Still further regarding claims **1**, **91**, **95**, and **99**, the applicant argues that Payton does not teach or reasonably suggest broadcasting a content descriptor schedule to a client to indicate a future broadcasting of content descriptors, the content descriptors including first content descriptors and second content descriptors, wherein the first content descriptors are assigned a first unique identifier and the second content descriptors are assigned a second unique identifier, wherein the first and second content descriptors are identified by the client via the first and second unique identifier, as recited in amended claim 1. The examiner respectfully disagrees. Payton discloses that lists of recommended items are communicated between the central distribution server and the subscribers through the broadcast medium (col. 3, l. 3-6; col. 6, l. 63-67; col. 7, l. 1-3; & col. 8, l. 5-10). The list of recommended items indicates items to be broadcast during the next refresh broadcast to the subscriber (col. 5, l. 46-48 & col. 6, l. 26-31). As such, the examiner interprets this as "broadcasting a content descriptor schedule to a client to indicate a future broadcasting of content descriptor," as currently claimed. Payton further

discloses that a scheduling processor merges the lists of recommended items to prioritize the items from the most to the least frequently recommended and places identifiers for the items in a queue for broadcast (col. 5, l. 21-26). When items reach the top of the queue, they are broadcast to the local users (col. 5, l. 26-28). Since the user may select a specific received item from a menu of items (col. 6, l. 26-36), the examiner interprets each item as including a first unique content descriptor. Payton further discloses that highly-rated, previously viewed items can be included in an updated list of recommended items for the user and thus again included in the queue for broadcast (col. 5, l. 19-28). Since the user may select this item from the menu of items (col. 6, l. 26-36), the examiner interprets each of these items as including a second unique content descriptor. As such, the examiner maintains that Payton meets the limitation of “the content descriptors including first content descriptors and second content descriptors, wherein the first content descriptors are assigned a first unique identifier, and the second content descriptors are assigned a second unique identifier, wherein the first and second content descriptors are identified by the client via the first and second unique identifier,” as currently claimed.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims **1, 81, 87, 88, 90-92, 95, 96, 99-101** are rejected under 35 U.S.C. 102(b) as being anticipated by Payton.

Referring to claims **1, 88, 91, 95, 99, and 100**, Payton discloses a method/machine-readable medium/system/apparatus, comprising:

- broadcasting a content descriptor schedule to a client to indicate a future broadcasting of content descriptors (a list of recommended items can be broadcast to the user indicating items to be broadcast. A scheduling processor merges the lists to prioritize the items from the most to the least frequently recommended and places identifiers for the items in a queue for broadcast)(col. 3, l. 3-6, 9-15; col. 5, l. 12-31; col. 6, l. 26-31, 63-67; col. 7, l. 1-3; & col. 8, l. 5-10), the content descriptors including first content descriptors and second content descriptors, wherein the first content descriptors are assigned a first unique identifier (when items reach the top of the queue, they are broadcast to the local users. Since the user may select a specific received item from a menu of items, the examiner interprets each item as including a first unique content descriptor), and the second content descriptors are assigned a second unique identifier (highly-rated, previously viewed items can be included in an updated list of recommended items for the user and thus again included in the queue for broadcast. The examiner interprets the second broadcast of this item as including a second unique content identifier)(col. 5, l. 19-28), wherein the first and second content descriptors are identified by the client via the first and second unique identifier (col. 6, l. 26-31);

- broadcasting the first content descriptors to the client, the first content descriptors describing the content for broadcast (col. 3, l. 2-15; col. 5, l. 55-57; & col. 6, l. 1-9, 29-31);
- prioritizing the content in response to a feedback received from the client (col. 3, l. 13-14 & col. 5, l. 22-31, 55-57), wherein the feedback is automatically generated transparent to the client based on an amount of content consumed by the client (col. 6, l. 44-50 & col. 8, l. 38-43);
- broadcasting the second content descriptors, the second content descriptors describing the prioritized content for broadcast and broadcasting the prioritized content to the client (col. 3, l. 12-17; col. 6, l. 67; col. 7, l. 1-7, 61-65; & col. 8, l. 11-13);
- receiving a demand table having rankings of the prioritized content based on user interests, the demand table is created and updated at the client in response to filtering of the prioritized content based on the user interests being performed at the client, wherein the demand table is received in response to a signal received at the client from a server (col. 7, l. 61-67; col. 8, l. 1-5; & Fig. 4), or the demand table is received automatically at a predetermined time (col. 5, l. 6-10; col. 6, l. 36-40, 51-53; col. 7, l. 61-67; col. 8, l. 1-5, 50-56; & Figs. 4, 6);
- refining the prioritized content into demanded content based on the demand table (col. 5, l. 19-21); and
- broadcasting the demanded content to the client (col. 5, l. 22-28).

Further referring to claim 95, Payton discloses that the server has a storage medium (col. 4, l. 55-58 & Fig. 2) and an integrated circuit 47 coupled via a bus including a multi-drop bus (the

examiner notes that the scheduling processor and digital repository in the central distribution server are coupled via a multi-drop bus to the playback devices (col. 61-67; col. 10, l. 1-20; & Fig. 8), wherein the integrated circuit performs the above functions.

NOTE: The USPTO considers the applicant's "or" language to be anticipated by any reference containing either of the corresponding elements.

Referring to claims **81, 92, 96, and 101**, Payton discloses the method/machine-readable medium/system/apparatus of claims 1, 91, 96, and 99, respectively, wherein the feedback received from the client is received in a batch (the examiner notes that by sending the subscriber profile data in response to a periodic trigger, the data is sent in a batch)(col. 7, l. 65-67 & col. 8, l. 1-4).

Referring to claim **90**, Payton discloses the method of claim 1, further comprising updating a descriptor table at the client in accordance with the first and second content descriptors (col. 3, l. 15-17; col. 6, l. 67; & col. 7, l. 1-3, 61-65).

Referring to claim **87**, Payton discloses the method of claim 1, wherein the content first and second content descriptors include metadata to describe one or more of the content, the prioritized content, and the demanded content (the examiner notes that data describing the transmitted items is necessary and inherent to Payton, in order to allow a subscriber interface 58 to display the list of recommended items)(col. 6, l. 7-9, 26-29, 67 & col. 7, l. 1-3).

NOTE: The USPTO considers the applicant's "one or more of" language to be anticipated by any reference containing any of the subsequent corresponding elements.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims **82, 93, 97, 102** are rejected under 35 U.S.C. 103(a) as being unpatentable over Payton.

Referring to claims **82, 93, 97, and 102**, Payton discloses the method/machine-readable medium/system/apparatus of claims 1, 91, 97, and 99, respectively. Payton further discloses that subscriber profiles are communicated between the central distribution server and the subscribers over a low bandwidth back channel (col. 3, l. 2-6 & col. 6, l. 51-58). Payton still further discloses that the local server 28 sends new subscriber profile data in response to a periodic trigger (col. 7, l. 65-67 & col. 8, l. 1-4). Payton does not disclose staggering sending of the feedback to the server by the client, wherein the staggering is based on a last time the client sent feedback to the server. Applicant's failure to adequately traverse the Examiner's taking of Official Notice (that it is well known within the prior art to stagger the sending of information across a network to minimize network congestion) in the last Office Action is taken as an admission of the fact(s) noticed. It would have been obvious to one of ordinary skill in the art at the time that the invention was made to modify Payton's method of periodically sending subscriber profile data across a low bandwidth back channel to include staggering the sending of information, such as that taught by the prior art in order to minimize network congestion.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Van Handel whose telephone number is 571-272-5968. The examiner can normally be reached on 8:00am-5:30pm Mon.-Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Kelley can be reached on 571-272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MVH


CHRIS KELLEY
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600